

This Opinion is Not a
Precedent of the TTAB

Mailed: February 10, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Pan American Properties, Corp.
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Serial No. 88277015
—

Samuel F. Pamas of Hogle & Pamas PSC,
for Pan American Properties, Corp.

Jeri Fickes, Trademark Examining Attorney, Law Office 107,
J. Leslie Bishop, Managing Attorney.

—
Before Bergsman, Coggins, and Dunn,
Administrative Trademark Judges.

Opinion by Dunn, Administrative Trademark Judge:

Pan American Properties, Corp. (“Applicant”) seeks registration on the Principal Register of the mark SANGRIIITA (in standard characters) for “alcoholic beverages except beers; prepared alcoholic cocktail,” in International Class 33.¹

¹ Application Serial No. 88277015 filed on January 25, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based upon Applicant’s allegation of a bona fide intention to use the mark in commerce.

References to the application are to the downloadable .pdf version of documents available from the TSDR (Trademark Status and Document Retrieval) database. The TTABVUE citations refer to the Board’s electronic docket, with the first number referring to the docket entry and the second number, if applicable, referring to the page within the entry.

The Trademark Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, as applied to the goods identified in the application, so resembles the typed mark SANGRITA for "non-alcoholic drinks produced with fruit and vegetable juices and spices," in International Class 32,² on the Principal Register as to be likely to cause confusion, to cause mistake, or to deceive; under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that Applicant's mark, as applied to the goods identified in the application, is merely descriptive; and under Trademark Rule 2.61(b), 37 C.F.R. 2.61(b), for Applicant's failure to provide information required for examination.

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We find that Applicant provided the required information, and so reverse the refusal on that basis, but otherwise affirm.

I. Likelihood of Confusion

Section 2(d) of the Trademark Act prohibits registration of a mark that so resembles a registered mark as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion, mistake, or deception. 15 U.S.C. § 1052(d). Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all probative facts in the record that are relevant to the likelihood of confusion factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177

² Registration No. 1696386, issued June 23, 1992, renewed.

USPQ 563, 567 (CCPA 1973). We have considered each relevant *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”).

A. Similarity of the SANGRITA and SANGRIITA Marks

We consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression. *See In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d mem.*, 777 Fed. App’x 516 (Fed. Cir. 2019). The test, under the first *DuPont* factor, is whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. *In re i.am.symbolic, llc*, 123 USPQ2d at 1748.

Here, the marks are highly similar. Applicant’s mark SANGRIIITA in standard characters differs from the registered mark SANGRITA in standard characters³ by the tripled letter I in the second syllable. The addition of the two extra letter “I”s turns the eight letter term SANGRITA into the slightly longer, ten letter term SANGRIIITA. Because of its placement in the middle of Applicant’s mark, the two extra letter “I”s makes only a small difference to how the mark looks. We find that Applicant’s mark would be perceived as a slight misspelling, and phonetic equivalent, of the registered term SANGRITA. Slight differences in marks do not normally create dissimilar marks. *In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1405 n.17 (TTAB 2018) (“We find that the minor differences between I LOVE YOU and I LUV U in appearance due to the different spellings of the words “love” and “you” do not outweigh the identity of the entire marks in terms of sound, connotation, and commercial impression.”); *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1646 (TTAB 2009) (“CYNERGY and SYNERGIE are highly similar, if not identical, phonetic equivalents. We find applicant’s arguments to the contrary unpersuasive, including the argument that the first ‘Y’ in CYNERGY will be pronounced as a long ‘I.’.”); *Hewlett-Packard Dev. Co., L.P. v. Vudu, Inc.*, 92 USPQ2d 1630, 1632(TTAB 2009) (“[T]here is no genuine issue that the marks [VUDU and VOODOO] are phonetic equivalents for the identical arbitrary term, are assumed to be presented in the same display or form of lettering, carry the same connotation, and convey very similar

³ Prior to November 2, 2003, “standard character” marks were known as “typed” marks; they are legal equivalents. *In re Viterra*, 101 USPQ2d at 1909 n.2 (Fed. Cir. 2012); *In re Country Oven, Inc.*, 2019 USPQ2d 443903, *2 n.2 (TTAB 2019).

overall commercial impressions.”); *Alfacell v. Anticancer Inc.*, 71 USPQ2d 1301, 1305 (TAB 2004) (ONCASE v. ONCONASE: “As seen and spoken, this middle portion may be missed by many of the relevant purchasers.”).

Applicant argues that there is a significant difference in how the terms SANGRITA and SANGRIIITA would be pronounced, but we are not persuaded. Applicant contends “[a]fter a consumer is encountered with Appellant’s mark in writing, he or she should elongate the ‘I’ vowel sound when they verbalize the term.”⁴ While the standard pronunciation of a vowel preceding a single letter “T” would be elongated (i.e. as in the term “margarita”), “SANGRITA” is not a dictionary term with a well-known pronunciation, and so we do not belabor the point except to note that “there is no correct pronunciation of a trademark, and consumer may pronounce a mark differently than intended by the brand owner.” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir. 2014) (quoting *Viterra*, 101 USPQ2d at 1912). We note merely that any distinction in pronunciation is not significant because the alleged distinction, if consumers even notice it, occurs in the middle of a three-syllable word that is otherwise identical. *See Interlego AG v. Abrams/Gentile Entm’t Inc.*, 63 USPQ2d 1862, 1863 (TTAB 2002) (finding similarity between LEGO and MEGO, despite the applicant’s contention that consumers would pronounce MEGO as “me go”).

The point most ardently disputed by Applicant is that there is a confusing similarity in the connotation of its SANGRIIITA mark and the registered SANGRITA

⁴ 14 TTABVUE 6.

mark. Applicant submits “negative evidence” that the term “sangriiita” does not have a Spanish translation, appear in a Spanish dictionary, or produce any results from the wine-searcher search engine.⁵ Applicant contends that the term SANGRIIITA is “an imaginative witty, new and nonexistent word in the English language” and “does not refer a Mexican non-alcoholic drink that is made to be drank as a chaser.”⁶

While the term “sangrita” does not appear in general dictionaries, there is no dispute that the term is recognized in the field of alcoholic beverages as describing a combination of juices and spices which originated as the traditional Mexican chaser for tequila. The record includes the following evidence, some of which was submitted by Applicant, demonstrating the meaning of the term SANGRITA to consumers of alcoholic beverages:

If the name sangrita sounds familiar to you, it probably means one of two things: Either you think I can't write the word “sangria” or you're an experienced tequila drinker who knows how to make top shelf tequila even more enjoyable. Sangrita (pronounced just like it looks) is a traditional Mexican drink served as a chaser to high-end tequilas. Little-known in the States, it does not contain alcohol, but rather it is a simple mix of juices and spices that is designed to be consumed alongside your tequila, alternating sips and cleansing and brightening the palate as you drink - neither should be “shot” in one gulp. It's sweet, spicy, and savory all in one little pony glass, and with tequila, the effect can be divine.

<http://www.foodrepublic.com/recipes/sangrita-recipe/>⁷

Sangrita

This spicy drink (its name translates to "little blood") is usually served neat beside a glass or snifter of neat tequila; each is sipped intermittently. If you put lime wedges in a third glass, the presentation is called a "bandera" (flag) because it echoes the green, white and red of the Mexican flag. Hundreds of

⁵ May 7, 2020 Request for Reconsideration TSDR 40-47, 79-83.

⁶ 9 TTABVUE 12-13, 15.

⁷ May 7, 2020 Request for Reconsideration TSDR 85.

variations on sangrita, both commercial and homemade, are served throughout Mexico.

Recipe Finder, The Washington Post (August 20, 2008)⁸

Sangrita

A beverage originating in Mexico that is made from vegetable juice, citrus juices and spicy seasonings. Initially, Sangrita was created as a beverage that would extinguish the intensity of home-brewed tequila. Therefore, it is common to see Sangrita being served with a shot of tequila, which is referred to as *tequila completo*. A typical mix of ingredients for Sangrita combines the juice of tomatoes with the juice from limes and oranges blended together. Lemon juice may be substituted for lime juice and other ingredients may also be added such as grenadine, as there are many variations of the traditional Sangrita recipe. A seasoning that is intense in heat, such as crushed chiles or a hot sauce are added to the beverage after it is blended, providing a spicy taste to the mild citrus and vegetable flavors.

www.recipetips.com/glossary-term/t-37527/sangrita.asp⁹

Sangrita: The sassy companion to tequila

Instead of dumping so much stuff into a nuanced spirit like a good tequila, try it neat, with a chaser alongside. Enter the sangrita. ... Although traditionally made with pomegranate, orange and lime juices, with a chili component for plenty of heat, most in the U.S. are made with tomato juice. Hutson rails against them, finding them too thick.

And don't even mention the bars that compete for the most unusual variation, adding Sriracha, garlic or horseradish. They taste more like a bloody mary, Hutson says: "But that's not what we're making. We're making a chaser that should absolutely highlight tequila, not take away from it."

Sangrita's texture should be light, though not watery. It should taste tart and sweet, with some salt to bring out flavor, and should give a rush of heat from chili (ground chilies or a good hot sauce).

Popular in Mexico for years (indeed, an order of tequila is served with sangrita without asking, Hutson says), sangrita is gaining ground up north as well, though it's still relatively unknown. Most of the nine tequila bars I visited for tastings say that customers rarely ask for it.

<https://www.chicagotribune.com/dining/ct-xpm-2014-06-06-sc-food-0606-sangrita-20140607-story.html>¹⁰

⁸ May 7, 2020 Request for Reconsideration TSDR 50. The Examining Attorney did not object to the absence of an URL on what appears to be a screenshot of an internet page, and so we also consider it.

⁹ April 15, 2019 Office Action TSDR 8-9.

¹⁰ May 7, 2020 Response TSDR 51-52.

Sangrita

There are many delicious variations on this tequila accompaniment. Traditionally made with just orange juice, lime juice, and pomegranate juice, many versions today rely on tomato juice as well. Use the following recipe as a guideline and adjust it to your tastes. Maggi sauce, Tajin, smoked salt, or cilantro are all fun twists to put on the drink to make it your own.

www.tastings.com/Drinkipedia/Sangrita-Definition.aspx¹¹

How to Cocktail: Sangrita

Sangrita is the classic accompaniment to tequila shots in Mexico. In this short video, tequila expert and Liquor.com advisory board member Jacques Bezuidenhout introduces you to the deliciously spicy citrus-and-tomato concoction.

INGREDIENTS

- 2 oz Tabasco Sauce or Cholula Hot Sauce
 - 2 oz Lime juice
 - 6 to 8 oz Orange juice
 - 6 to 8 oz Grapefruit juice
 - 1tsp Salt
 - 2 tsp Freshly ground black pepper
 - 15 oz Tomato juice
- , 1 Jalapeno pepper, halved (with seeds)

www.liquor.com/video/sangrita/#gs.576ui¹²

In view of this evidence, we find that the registered term SANGRITA is highly suggestive of the goods in the registration, “non-alcoholic drinks produced with fruit and vegetable juices and spices.” We will not address Applicant’s contention that the registered mark is generic.¹³ The cited registration by statute is prima facie evidence of the validity of the registered marks. Trademark Act Section 7(b), 15 U.S.C. § 1057(b). If Applicant possesses evidence that the pleaded registration is invalid as generic, Applicant’s recourse would be to seek cancellation and suspend this appeal

¹¹ April 15, 2019 Office Action TSDR 10.

¹² April 15, 2019 Office Action TSDR 13-14.

¹³ 9 TTABVUE 19.

pending disposition of the cancellation.¹⁴ Because Applicant did not do so, the registered mark is presumed to be valid.

In view of the evidence of the uses of the term “sangrita” to describe a beverage, we agree that that the highly suggestive registered mark is entitled to a narrow scope of protection. However, because we find that Applicant’s mark SANGRIIITA would be perceived as a slight misspelling, and phonetic equivalent, of the registered term SANGRITA, and so shares the same connotation, we disagree that Applicant’s mark falls outside the registered mark’s scope of protection.

Applicant argues that SANGRIIITA has a different connotation. More specifically, Applicant argues that it owns a family of SANGRIIIA marks, and that based on the association between Applicant and SANGRIIIA, the mark SANGRIIITA will be perceived as a coined term which belongs to Applicant’s family:¹⁵

Moreover, Appellant must emphasize that, as a result of this mark intended to be used in connection with Appellant’s previously registered trademark GASOLINA SANGRIIIA, since it is Appellant’s family of marks, the consuming public will make the association between a “sangriiia” and “sangriiita”, particularly because they belong to the same of line of products, that is, prepared alcoholic cocktails, and it will be distributed to the same consumers and through the same channels of trade as the SANGRIIIA and GASOLINA SANGRIIIA products.

¹⁴ 9 TTABVUE 19. Applicant also contends that the mark is highly descriptive, but this is not grounds for invalidating a registration which issued in 1992. Trademark Act Section 14(3), 15 U.S.C. § 1064(3).

¹⁵ 9 TTABVUE 13. Applicant also submitted evidence to show that in the Spanish language, adding the letters “TA” to a term makes a new term which is a diminutive of the first word. Since, as discussed, we do not find that the term SANGRIIIA is associated with Applicant, we need not address whether the term SANGRIIITA is the diminutive form of SANGRIIIA, and so would be associated with Applicant.

Because an ex parte proceeding focuses on the mark an applicant is seeking to register, and not on any other marks the applicant may have used or registered, the family of marks doctrine is unavailable to applicants seeking to overcome a likelihood of confusion refusal in an ex parte proceeding. *See In re Hitachi High-Technologies Corp.*, 109 USPQ2d 1769, 1772 (TTAB 2014); *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009). Moreover, the three prior registrations which Applicant placed into evidence, all for the same “prepared alcoholic cocktail” listed in the application (but not including “alcoholic beverages except beers”), do not feature the term “sangriiii” alone but comprise one registration of the term GASOLINA SANGRIIIA in standard characters with “sangria” disclaimed (Registration No. 4099580¹⁶, issued February 14, 2012) and two registrations for the product packaging for the goods, including color, design elements and additional wording as shown below on a drink pouch and a drink box:

¹⁶ October 15, 2019 Response TSDR 33.

<p>Registration No. 5117050¹⁷ issued January 10, 2017</p>	<p>Registration No. 5121896¹⁸ issued January 17, 2017</p>
	

¹⁷ *Id.* at TSDR 35. The registration includes the description: The mark consists of product packaging for the goods. The entirety of the mark appears on a purple background, solid around the borders and with the design of bubbles in various shades of purple appearing around the packaging. On the right of the background, written sideways from bottom to top in a shade of purple is the wording “GASOLINA”. The phrase “STRAW INSIDE” written in white appears on the top left side of the background. To the left of this working is a white, left-pointing arrow. The phrase “READY 2 DRINK!” appears in the top right side of the packaging, written in red and outlined in yellow and black. Beneath the wording “READY 2 DRINK!” is the wording “COCKTAIL” appearing in yellow and outlined in black. In the middle of the mark is the term “SANGRIIIA”, written in white, stylized fonts. Below is a grey band that spreads across the design. Below is the design of red flames with an orange outline, appearing on a circular gold background, outlined in orange. Immediately below this design is the wording “GASOLINA” in red and outlined in black and yellow, above the wording “URBAN BLENDS” in white and outlined in black. The broken lines depicting the shape of the packaging indicate placement of the mark on the goods and are not part of the mark.

The color(s) purple, red, yellow, orange, grey, gold, black and white is/are claimed as a feature of the mark. “STRAW INSIDE”, “READY TO DRINK COCKTAIL”, “SANGRIA”, and “BLENDS” disclaimed. The English translation of the word “GASOLINA” in the mark is “GASOLINE”.

¹⁸ *Id.* TSDR 37. The registration includes the description: The mark consists of three dimensional trade dress of the product packaging for the goods. The box in which the goods are packaged is purple, with purple bubbles appearing throughout the packaging background. The white wording “SANGRIIIA” appears in the front, top, left side of the packaging. Below it, on the front, bottom, left side of the packaging appears the wording “GASOLINA URBAN BLENDS” & Flame in Circle Design; this wording and design element appear four times on the product packaging, each time in the colors detailed herein. The design is of red flames with an orange outline, appearing on a circular gold background, outlined in orange. Immediately below this design is the wording “GASOLINA” in red and outlined in black and appearing on a yellow background, above the wording “URBAN BLENDS” in white and outlined in black. On the right side of the front of the packaging is a purple rectangle, outlined in white, which represents the individual product packaging in the shape of a pouch. The pouch is purple with purple bubbles in the background. On the right

All three of Applicant's registrations feature marks with multiple elements, including other wording, and a disclaimer of the term SANGRIA. We find that the registrations, which are not for the term SANGRIIA alone, do not establish any association between Applicant and the term SANGRIIA alone. As a result, the record includes no evidence of an association between Applicant and the term SANGRIITA which would outweigh the evidence that SANGRIITA will be perceived as a misspelling of the registered mark SANGRITA.¹⁹

Applicant also submitted the August 18, 2016 declaration of its Vice President Alberto Fernandez, averring that Applicant sold more than 10 million units of the GASOLINA SANGRIIA products in the preceding five years; invested more than \$5 million in advertising the GASOLINA SANGRIIA mark during the same period; the mark was advertised on Applicant's drinks boxes and pouches, on store displays,

of the pouch, written sideways from bottom to top in a shade of purple is the wording "GASOLINA". The phrase "STRAW INSIDE" written in white appears on the top left side of the background. To the left of this wording is a white, left-pointing arrow. In the middle of the pouch is the white wording "SANGRIIA" above a curved, grey band that spreads across the design. Below the band is the "GASOLINA URBAN BLENDS" & Flame in Circle Design. On the right of the front of the box, written sideways from bottom to top in a shade of purple is the wording "GASOLINA". On the front upper right of the product packaging box is the wording "READY 2 DRINK!", written in red and outlined in yellow and black. Beneath the wording "READY 2 DRINK!" is the wording "COCKTAIL" appearing in yellow and outlined in black. On the top, left and back panels of the box, the "GASOLINA URBAN BLENDS" & Flame in Circle Design appears on the left and the white wording "SANGRIIA" appears on the right. The broken lines depicting the shape of the packaging indicate placement of the mark on the goods and are not part of the mark. The color(s) purple, red, yellow, orange, grey, gold, black and white is/are claimed as a feature of the mark. "STRAW INSIDE", "READY TO DRINK! COCKTAIL", "SANGRIA", and "BLENDS" are disclaimed. The color(s) purple, red, yellow, orange, grey, gold, black and white is/are claimed as a feature of the mark. The English translation of "GASOLINA" in the mark is "GASOLINE."

¹⁹ In fact, Applicant's disclaimer of SANGRIA in each registration is an acknowledgement that the term SANGRIIA in each mark will be perceived as a misspelling of "sangria," and bolsters our finding that SANGRIITA will be perceived as a misspelling of "SANGRITA."

outdoor displays, vehicle displays, and online advertisements and social media, with sample advertisements attached; the goods are sold in different commercial channels for alcoholic beverages, including gas stations, pharmacies, supermarkets, convenience stores, bodegas, and wholesale chain stores such as Sam's, Costco, Walmart, and Kmart; and that Applicant's GASOLINA SANGRIIIA products are well known.²⁰ Applicant also submitted summary results from a search engine search for the term SANGRIIIA which largely refer to Applicant.²¹ However, while a few advertisements and search results refer only to "sangriiia," the majority of the search results include photos and references to Applicant's GASOLINA SANGRIIIA beverages. While this evidence makes clear that Applicant advertises and sells a popular product, it largely suffers from the same defect as the registrations; it does not establish any association between Applicant and the term SANGRIIIA alone, and so cannot create any association between Applicant and the term SANGRIIITA alone.

Because the cited mark SANGRITA and Applicant's mark SANGRIIITA differ only by a repeated vowel in the middle, we find that the marks SANGRIIITA and SANGRITA look and sound the same, and have the same connotation of the juice and spice beverage sangrita. For these reasons, the involved marks are virtually identical, and create the same commercial impression. This factor weighs heavily in favor of finding a likelihood of confusion.

²⁰ October 15, 2019 Response TSDR 42-202; 105-108 (English and presumably Spanish declaration). Applicant also submitted essentially the same declaration in English and presumably Spanish dated June 2014. TSDR 100-104.

²¹ *Id.* TSDR 88-99; May 7, 2020 Response 73-74.

B. Similarity of the Goods and Trade Channels

We address “[t]he similarity or dissimilarity and nature of the goods ... as described in an application or registration...” and “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567. We must make our determinations under these factors based on the goods as they are identified in the registration and application. *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). In determining whether the goods are related, it is not necessary that we find a likelihood of confusion between all of the registered goods and all the goods listed in the application. When we consider the similarity of the parties’ goods, it is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1409 (TTAB 2015).

As stated, Applicant seeks registration of its mark for “alcoholic beverages except beers; prepared alcoholic cocktail,” and the registered mark is used on “non-alcoholic drinks produced with fruit and vegetable juices and spices.” We find that Applicant’s goods are defined broadly enough to include tequila and prepared sangrita cocktails, with which the juice and spice beverage sangrita is associated. *See* the discussion below. The registered goods are defined broadly enough to include mixers for alcoholic beverages, including the juice and spice beverage sangrita, and the ingredients for prepared alcoholic cocktails, including sangrita cocktails. Goods which are “used in

combination” are complementary, and “complementary use has long been recognized as a relevant consideration in determining a likelihood of confusion.” *In re Martin’s Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (“We agree with the Board that the complementary nature of bread and cheese cannot be ignored”). *Accord Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1788 (Fed. Cir. 1990) (“[M]odems and computer programs are commonly used together in networking We agree with the board that purchasers would likely be confused when goods as closely related as modems and computer programs are sold under the virtually identical marks of these parties”). “Merely because goods can be used together is not a sufficient basis on which to find them to be complementary. Rather, there must be some showing that customers would seek out both types of goods for the same purpose, for example, making an outfit by matching shoes and clothing, or making a sandwich by combining bread and cheese, to show that the goods are complementary.” *N. Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1232 (TTAB 2015). *Accord M.C.I. Foods, Inc. v. Bunte*, 96 USPQ2d 1544, 1552 (TTAB 2010) (finding Mexican food and tortilla chips complementary stating “[i]t is common knowledge that Mexican food is served with tortilla chips.”).

The record includes evidence that non-alcoholic drinks produced with juices and spices, such as the goods listed in the cited registration, may be combined with alcoholic beverages except beer, such as the goods listed in Applicant’s application, to make an alcoholic cocktail:

This classic Sangrita Cocktail recipe, a tomato-juice based tequila drink, has Mexican roots. It's the perfect brunch cocktail alternative to a Bloody Mary. ... If you're familiar with traditional Mexican food, you may have heard of Sangrita before. It's known as a traditional Mexican drink served as a chaser to high end tequila brands. The basic sangrita drink does not contain any alcohol. It's a blend of juices and spices meant to sip alongside your tequila. The Sangrita Cocktail has tequila built-in to the beverage, so it's all-in-one enjoyment!

HOW TO MAKE A SANGRITA COCKTAIL:

You'll combine your favorite tequila with tomato, orange and lime juices. Then you'll add a tiny bit of grenadine, Tabasco sauce and soy sauce. It's all poured over ice and stirred to combine. When ready to drink, you'll want to squeeze a fresh lime wedge and drop it into your Sangrita Cocktail.

SUBSTITUTIONS AND VARIATIONS:

If you search for Sangrita Cocktail recipes on the internet, you are most likely to find some pretty different variations! Try using Clamato juice, grapefruit juice, all orange and lime juices, stir in sugar to make it sweet, and incorporate cucumber in place of the lime. It's all a matter of taste, so you can experiment with flavors until you come up with the right combination of what you like best. <https://www.recipegirl.com/sangrita-cocktail/>²²

Sangrita Cocktail

How to Make It

Add orange juice, tomato juice, lime juice, Tabasco, and tequila to a tall, ice-filled tumbler. Stir gently. Garnish with lime wedge.

<https://www.realsimple.com/food-recipes/browse-all-recipes/sangrita-cocktail>²³

Sangrita Cocktail

This combination of Heinz Vegetable Cocktail, OJ and tequila may seem unusual, but the ingredients work together perfectly to create a spicy, sweet, refreshing cocktail that is sure to become a new summer favourite!

...

Special Extra

Combine 2 tsp chopped fresh cilantro and 1 tsp celery salt in small dish. Run 1 lime wedge around rim of clean empty glass. Invert in salt mixture, then turn to evenly coat rim. Let stand 1 min before filling with ice and the drink ingredients.

Fun Idea

Garnish filled glass with a hot chile, orange slice and/or lime slice

Variation

²² June 8, 2020 Denial of Reconsideration TSDR 60-64.

²³ *Id.* TSDR 69-70.

Prepare using Heinz Tomato Juice. Or, omit the hot pepper sauce and prepare recipe using Heinz Spicy Vegetable Cocktail.

<http://www.kraftcanada.com/recipes/sangrita-cocktail-212448>²⁴

LEYENDA'S RIZZO SANGRITA COCKTAIL

Sangrita is a refreshing palate cleanser traditionally sipped alongside a shot of tequila or mezcal, but in this cocktail from Leyenda, the two meet in the same glass.

1½ oz. espadin mezcal

1 oz. Rizzo Sangrita

¾ oz. fresh lime juice

½ agave syrup (2:1 agave water)

Tools: shaker, strainer

Glass: Collins

Garnish: lime wheel

Prepare a glass with a spicy salt rim (use a 2:1:1 ratio of salt to sugar to ground chile pequin) and set aside. In a mixing tin, shake all the ingredients together with ice until chilled and strain into the prepared glass over fresh ice. Garnish.

Rizzo Sangrita

2 oz. mango puree

9 oz. yellow bell pepper juice

1 tsp. salt

1 tsp. ground pasilla chile

½ tsp ground white pepper

1 tsp ground chile de arbol

2 oz. fresh lime juice

4 oz. water

Combine all the ingredients in a jar or jug and shake to blend. Store in the refrigerator when not in use.

<https://imbibemagazine.com/leyenda-rizzo-sangrita-cocktail/>²⁵

Bloody Maria Sangrita Recipe

Try a Mexican twist on the brunch fav Bloody Mary with this Bloody Maria Sangrita Recipe. Tequila with spicy tomato and citrus juices. Yum.

Traditionally, sangria ("little blood") is served as a companion for a high-quality 100% agave tequila and each is sipped alternately, not as a chaser to a shot. Early versions of sangrita would not have included tomato juice, it would have been made with the reserved juice from making a traditional Mexican fruit salad. It would have been the juices from lime, grapefruit, orange juice, cucumber, tangerine, pomegranate, and/or mango mixed with finely ground spicy chime powder.

²⁴ *Id.* TSDR 73-75.

²⁵ *Id.* TSDR 77-78.

<https://mermaidsandmojitos.corn/bloody-maria-sangrita-recipe/>²⁶

The record evidence also includes a dozen use-based third party registrations showing the same mark (3 STARS BREWING COMPANY, FASHIONBAR, NEW SEASONS, LOGIS DE LAFONT, TULASI, MYCOMATRIX, SMALL LIKE, DEADLY GROG, CIMARRON, TOO COLD TO HOLD, THE MIDDLE SPOON DESSERTERIE & BAR, and RED ROBIN'S ORIGINAL BEER CAN COCKTAIL) listing both alcoholic beverages, such as those offered by Applicant, and non-alcoholic beverages including juices, such as those offered by Registrant.²⁷ “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988) (unpublished table decision). *Accord In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1737 (TTAB 2018) (third party registrations support finding “optical lenses, namely, corrective lenses sold through eye care professionals” related to “spectacles, spectacle cases, spectacle lenses, spectacle settings, spectacle frames, glasses for sport, protective helmets for sports, binoculars, parts of these goods included in this class”

²⁶ *Id.* TSDR 82-85.

²⁷ June 8, 2020 Office Action TSDR 6-32, 48-59.

and “ski glasses, ski goggles, goggles for sports, protective sport helmets; sunglasses, bags specifically adapted for protective helmets”).

Applicant contends that the registered goods, when sold by sellers of alcoholic beverages, are categorized separately, with cocktails and spirits, such as Applicant’s goods, and mixers and waters, such as the registered goods, appearing in different places in an online store or in a physical store, referring to evidence in the record showing that the goods are offered under different categories or located on “different shelving locations.”²⁸ When considered in combination with the complementary nature of the goods, we disagree that this is a significant distinction. *See Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1433 (TTAB 2013) (holding various water beverages and wine closely related, used together in spritzers, and sold through the same trade channels to the same classes of customers).

Because Applicant’s “alcoholic beverages except beers; prepared alcoholic cocktail” and Registrant’s “non-alcoholic drinks produced with fruit and vegetable juices and spices” are complementary products that may be offered for sale by the same retailers and may be sold to and used together by the same consumers, we find the factors of similarity of goods and channels of trade weigh in favor of finding a likelihood of confusion.

²⁸ 9 TTABVUE 17-18; May 7, 2020 Response 34-39 (sunsetcorners.com categorizing “cocktails” and “mixers” separately).

C. Balancing the Factors

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. When we balance the *DuPont* factors, we conclude that confusion is likely to occur between Applicant's mark and Registrant's mark for their respective goods.

II. Mere Descriptiveness

Section 2(e)(1) of the Trademark Act precludes registration of "a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive ... of them." 15 U.S.C. § 1052(e)(1). "A mark is merely descriptive if it immediately conveys information concerning a feature, quality, or characteristic of the goods or services for which registration is sought." *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). Evidence that a term is merely descriptive to the relevant purchasing public may be obtained from any competent source. *Id.*, 123 USPQ2d at 1710; *In re Nett Designs*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Descriptiveness must be assessed "in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use." *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007). Here, we assess the refusal from the perspective of the average consumer of alcoholic beverages, except beer.

With respect to the significance that the term SANGRIITA would have to the average purchaser of Applicant's "alcoholic beverages except beers; prepared alcoholic

cocktail,” we find that Applicant’s mark SANGRIIITA would be perceived as a slight misspelling, and phonetic equivalent, of the term “sangrita.” See *In re Tapco Int’l Corp.*, 122 USPQ2d 1369, 1372 (TTAB 2017) (“Although we note that KLEER has a non-standard spelling, Applicant has provided no evidence that consumers would perceive KLEER as something other than the phonetic equivalent of ‘clear.’”); *In re Calphalon Corp.*, 122 USPQ2d 1153, 1163 (TTAB 2017) (“We find that SHARPIN evokes an immediate association with the phonetically-identical and otherwise virtually-identical word ‘sharpen’”). We need not repeat the comparison of the terms SANGRIIITA and “sangrita” which we made in determining the first refusal. We summarize that Applicant’s mark SANGRIIITA is highly similar in appearance and sound to the term “sangrita,” and the term “sangrita” has a well recognized meaning to consumers of alcoholic beverages. Applicant failed to demonstrate that its prior use of a different mark on prepared alcoholic cocktails created an association by prospective purchasers between the mark SANGRIIITA and Applicant which would outweigh the similarities to the term sangrita.

We find that the term SANGRIIITA will be perceived to immediately describe a primary component of Applicant’s alcoholic beverages and cocktails, namely sangrita. As set forth above in connection with the likelihood of confusion refusal, the record evidence shows sangrita was known originally as a nonalcoholic Mexican chaser to tequila, an alcoholic beverage. The record evidence also shows the evolution of the term sangrita to the average consumer of alcoholic beverages now includes sangrita as a component of alcoholic cocktails.

Applicant argues vigorously that its goods do not actually include “sangrita,” asserting:

[T]he products to be sold under the mark SANGRIIITA have no relationship to the Mexican drink ‘sangrita.’ As stated before, Appellant is engaged in the business of distributing and selling, among many others, prepared alcoholic cocktails under the marks SANGRIIIA and GASOLINA SANGRIIIA, which is a full line of prepared alcoholic cocktails available in various flavors.”²⁹

Applicant’s contention that it has not sold sangrita cocktails as part of its line of prepared cocktails under another mark mistakes the relevant standard. We do not assess the descriptiveness of Applicant’s mark based on evidence of how Applicant actually uses the mark. The determination of whether a mark is merely descriptive must be made in relation to the goods for which registration is sought. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012). “Whether consumers could guess what the product is from consideration of the mark alone is not the test.” *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985). Rather, “the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). Applicant is not restricted to use of the mark SANGRIIITA on the same goods with which it now uses its SANGRIIIA mark. In fact, Applicant seeks registration on a very broad identification of alcoholic beverages and prepared alcoholic cocktails, and these goods include sangrita cocktails. Thus, consumers encountering “alcoholic

²⁹ 9 TTABVUE 22-23.

beverages except beers; prepared alcoholic cocktail” branded as SANGRIIITA will know the nature of those products without the need of a multi-step reasoning process, logic, or cogitation.

Based on the evidence of record, we find that the term SANGRIIITA will be perceived by prospective purchasers of Applicant’s identified “alcoholic beverages except beers; prepared alcoholic cocktail,” as immediately conveying that the goods feature sangrita.

III. Requirement for Information

Pursuant to Trademark Rule 2.61(b), 37 C.F.R. 2.61(b), “The Office may require the applicant to furnish such information, exhibits, affidavits or declarations, and such additional specimens as may be reasonably necessary to the proper examination of the application.” The rule recognizes that an applicant may be “in the best position to supply the facts and information necessary for the Office to determine the registrability of a trademark and is designed to encourage efficient and high quality trademark examination.” *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1093 (TTAB 2017). Failure to comply with an examining attorney’s requirement of information under the rule is grounds for refusal of registration. *In re AOP LLC*, 107 USPQ2d 1644, 1651 (TTAB 2013).

Here, the Examining Attorney required Applicant to provide the following information:³⁰

[E]xplain whether the wording in the mark “SANGRIIITA” or its phonetic equivalent “sangrita” has any significance in the alcoholic beverage trade or

³⁰ April 15, 2019 Office Action TSDR 4.

industry or as applied to applicant's goods, or if such wording is a "term of art" within applicant's industry.

[W]ill applicant's goods feature sangrita as a component or be used in preparing sangrita?

Applicant responded:³¹

"SANGRIIITA" is a made-up word that is the diminutive of applicant's registered mark and the products to be sold with it do not contain "sangrita" or any ingredient thereof.

Applicant invented the term SANGRIIITA, which creates a unique word that does not describe a particular ingredient of the goods identified in the applicant's goods are "alcoholic beverages except beers; prepared alcoholic cocktail"; these goods do not contain "sangrita" as part of their ingredients.

Furthermore, "SANGRIIITA" is intended to be used to identify the same type of goods as those identified under the registered marks SANGRIIIA and "GASOLINA SANGRIIIA" which has no relation to the goods identified by the trademark "Sangrita" or the product sangrita itself.

In the November 7, 2019 Office Action, the Examining Attorney found that the information requirement "has not been directly addressed by applicant," and made the requirement to provide information final. In the May 7, 2020 request for reconsideration, Applicant did not separately address the requirement for information. In her denial of Applicant's request for reconsideration, the Examining Attorney states "Applicant has not indicated whether its goods will feature sangrita as a component." In her brief, the Examining Attorney credits Applicant with good faith in its efforts to meet the requirement, but producing responses intertwined with its arguments, and so unclear as to the requested fact.

³¹ October 15, 2019 Response TSDR 22, 30-31.

We find the requirement was met. In Applicant's response asserting "SANGRIIITA" is a made-up word that is the diminutive of applicant's registered mark and the products to be sold with it do not contain 'sangrita' or any ingredient thereof," it is true that the first part argues the refusal, but the second half of the sentence provides the requested information very plainly.

We reverse the refusal based on a failure to provide required information.

Decision

While we reverse the refusal based on the requirement for information, which was satisfied by Applicant's response, we affirm the refusals finding that Applicant's mark SANGRIIITA when used on alcoholic beverages and prepared cocktails is likely to be confused with the registered mark SANGRITA for non-alcoholic drinks produced with fruit and vegetable juices and spices, and that Applicant's mark SANGRIIITA when used on alcoholic beverages and prepared cocktails will be perceived as merely descriptive of a component of those goods.

The refusals to register Applicant's mark SANGRIIITA under Sections 2(d) and 2(e)(1) of the Trademark Act are affirmed.